

Translation

PATENT COOPERATION TREATY

PCT/JP2003/011338



PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY  
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference  663954	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No.  PCT/JP2003/011338	International filing date (day/month/year)  05 September 2003 (05.09.2003)	Priority date (day/month/year)  06 September 2002 (06.09.2002)
International Patent Classification (IPC) or national classification and IPC  A61K 31/4409, C07D213/89, A61K31/3324, A61P 35/00		
Applicant  D. WESTERN THERAPEUTICS INSTITUTE		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>4</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of _____ sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p> <p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>
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Date of submission of the demand  09 March 2004 (09.03.2004)	Date of completion of this report  02 July 2004 (02.07.2004)
Name and mailing address of the IPEA/JP	Authorized officer
Facsimile No.	Telephone No.

## Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

This report is based on translations from the original language into the following language \_\_\_\_\_, which is language of a translation furnished for the purpose of:

international search (under Rules 12.3 and 23.1(b))  
 publication of the international application (under Rule 12.4)  
 international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):

The international application as originally filed/furnished

the description:

pages \_\_\_\_\_, as originally filed/furnished

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

the claims:

pages \_\_\_\_\_, as originally filed/furnished

pages\* \_\_\_\_\_, as amended (together with any statement) under Article 19

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

the drawings:

pages \_\_\_\_\_, as originally filed/furnished

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3.  The amendments have resulted in the cancellation of:

the description, pages \_\_\_\_\_  
 the claims, Nos. \_\_\_\_\_  
 the drawings, sheets/figs \_\_\_\_\_  
 the sequence listing (specify): \_\_\_\_\_  
 any table(s) related to sequence listing (specify): \_\_\_\_\_

4.  This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

the description, pages \_\_\_\_\_  
 the claims, Nos. \_\_\_\_\_  
 the drawings, sheets/figs \_\_\_\_\_  
 the sequence listing (specify): \_\_\_\_\_  
 any table(s) related to sequence listing (specify): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

## Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

the entire international application.

claims Nos. 13-19

because:

the said international application, or the said claims Nos. 13-19  
relate to the following subject matter which does not require an international preliminary examination (specify):

The subject matters of the above claims fall under methods for treatment of the human body by therapy, which does not require an international preliminary examination by the International Preliminary Examining Authority according to PCT Rule 67.1(iv).

the description, claims or drawings (*indicate particular elements below*) or said claims Nos. \_\_\_\_\_  
are so unclear that no meaningful opinion could be formed (specify):

the claims, or said claims Nos. \_\_\_\_\_ are so inadequately supported  
by the description that no meaningful opinion could be formed.

no international search report has been established for said claims Nos. 13-19.

the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form  has not been furnished

does not comply with the standard

the computer readable form  has not been furnished

does not comply with the standard

the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

see Supplemental Box for further details.

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP03/11338

**Box No. V** Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

## 1. Statement

Novelty (N)	Claims	7, 9	YES
	Claims	1-6, 8, 10-12	NO
Inventive step (IS)	Claims		YES
	Claims	1-12	NO
Industrial applicability (IA)	Claims	1-12	YES
	Claims		NO

## 2. Citations and explanations (Rule 70.7)

The following documents are cited in the ISR:

Document 1: WO, 95-27699, A1

Document 2: Goodman and Gilman's The Pharmacological Basis of Therapeutics – 9<sup>th</sup> ed., 1996, pages 1225-1232 and 1269-1271

Document 3: JP, 2001-261649, A

Documents 1 and 3 describe compounds that are encompassed within those of the general formula (I) described in claim 1, as remedial agents for treating malignant tumor.

Document 2 describes that more than one chemotherapeutic agent in combination is used or that radiotherapy and chemotherapy are combined.

The medicinal drugs described in claims 1-6, 8 and 10-12 have the same active ingredients as those described in documents 1 and 3, and are used for treatment of the same diseases as them. The medicinal drugs described in the said claims and those described in documents 1 and 3, inventions of medicinal drugs, are the same as each other. Accordingly, the subject matters of the said claims do not appear to be novel or to involve an inventive step according to the provisions of PCT Article 33 (2).

On the other hand, none of the documents cited in the ISR describes medicinal compositions or kits containing compounds represented by the formula (I) and other active ingredients as in claims 7 and 9, and so they appear to be novel as provided in PCT Article 33 (2).

However, as described in document 2, methods of administering more than one chemotherapeutic agent in combination to enhance the treatment effect are already well known in chemotherapy for malignant tumor, and so simply combining anti-tumor drugs with other ones into a kit as the medicinal compositions, etc. described in claims 7 and 9 would be an obvious matter for a person skilled in the art.

Accordingly, the medicinal compositions and kits described in claims 7 and 9 do not appear to involve an inventive step according to the provisions of PCT Article 33 (3).